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SENATE

REPORT
101-434

DRUNK DRIVING VICTIMS' PROTECTION ACT

AUGUST 30, 1990.—Ordered to be printed

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Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1931, as amended]

The Committee on the Judiciary, to which was referred the bill, S. 1931, to prevent the discharge in a chapter 13 bankruptcy proceeding of certain debts arising out of the debtor's operation of a motor vehicle while legally intoxicated, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends by unanimous consent that the bill, as amended, do pass.

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The amendment is as follows:

39-010

S523-18

Strike all after the enacting clause and insert the following:

SECTION 1. This Act may be cited as the "Drunk Driving Victims' Protection Act".

SEC. 2. Section 1328(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking out "or";

(2) in paragraph (2), by striking out the period at the end and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) of the kind specified in section 523(a)(9) of this title.".

SEC. 3. Paragraph (9) of section 523(a) of title 11, United States Code, is amended to read as follows:

"(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated or impaired by use of alcohol or drugs under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred;".

SEC. 4. Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (12), by striking out "or";

(2) in paragraph (13), by striking out the period at the end and inserting in lieu thereof "; or"; and

(3) by adding the following new paragraph:

"(14) under subsection (a) of this section, of the commencement or continuation of an action on a claim of the type described at section 523(a)(9) of this title.".

SEC. 5. Section 523(a) of title 11, United States Code (as amended by section 3 of this Act) is further amended—

(1) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; or"; and

(2) by adding at the end thereof the following:

"(11) to the extent that such debt arises from a proceeding brought by a governmental unit to recover civil or criminal restitution, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit.".

SEC. 6. Section 1322(a) of title 11, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) provide for the full payment, in deferred cash payments, of all claims which would be nondischargeable under section 523(a)(11).".

I. PURPOSE

The purpose of S. 1931 is to clarify the Bankruptcy Code to prevent "drunk" or "drugged" drivers from escaping payment of civil judgments to their victims by filing for bankruptcy. S. 1931, the "Drunk Driving Victims' Protection Act," will amend certain sections of the Bankruptcy Code so that a debtor may not discharge a civil judgment related to damages caused as a result of driving a motor vehicle while legally intoxicated or impaired by the use of alcohol or drugs. Currently, some debtors are using a loophole in our bankruptcy laws to discharge judgments awarded against them, and thereby are escaping full payment to their victims. S. 1931 will close this loophole and make these debts nondischargeable, will force drunk or drugged drivers to pay on their civil judgments, and will provide victims or their families with a measure of compensation.

Additionally, S. 1931 will make civil and criminal restitution orders arising from actions brought by the Government nondischargeable in bankruptcy. This provision will codify in some situa-

tions, and clarify in others, current case law concerning the treatment of restitution orders in bankruptcy.

II. Legislative History

Legislation addressing the nondischargeability of drunk driving related civil judgments was first introduced in the Senate by Senator Danforth on February 24, 1983, as S. 605. This legislation was referred to the Judiciary Committee and subsequently was referred to the Subcommittee on Courts and Administrative Practice. Despite the absence of further committee action, this legislation was added as an amendment in conference committee as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353).

The Danforth amendment was intended to close a loophole that allowed drunk drivers to receive a discharge of their debts through the filing of a bankruptcy petition. Even with this reform, however, drunk drivers have continued to discharge judgments awarded against them by filing for personal bankruptcy under chapter 13. It was not the intent of Senator Danforth's 1984 legislation to allow drunk drivers to escape full payment to their victims in this manner.

On November 20, 1989, Senator Danforth, along with Senator Biden, Senator Thurmond, and Senator Pell, introduced S. 1931. This legislation was referred to the Senate Judiciary Committee, and then, on December 11, 1989, to the Subcommittee on Courts and Administrative Practice. On March 1, 1990, the Subcommittee on Courts and Administrative Practice adopted an amendment offered by Senator Grassley that makes civil and criminal restitution orders arising from Government actions nondischargeable in bankruptcy. At the June 14, 1990, Executive Business Meeting of the Judiciary Committee, an amendment in the nature of a substitute to S. 1931 was offered by Senator Biden and Senator Thurmond and was favorably reported by unanimous consent.

III. Discussion

A. BACKGROUND

In 1988, there were 23,352 alcohol-related highway fatalities in this country. A drunk driving crash in which an innocent victim is injured or killed is a tragedy. It is a double tragedy if the drunk driver can avoid paying a civil judgment to his victims by seeking protection under the Bankruptcy Code. S. 1931 will help ensure that victims are compensated for their damages by drunk drivers. Those guilty of destroying the lives of innocent citizens will no longer find safe haven in our bankruptcy laws.

In 1984, legislation was enacted that prevented drunk drivers from escaping payment of civil judgments to their victims by filing for bankruptcy under chapter 7 of the Bankruptcy Code. Although one loophole was closed, another one remains: Drunk drivers continue to be able to discharge civil judgments through a chapter 13 bankruptcy filing. Instead of the liquidation of personal assets that occurs under chapter 7, chapter 13 allows the debtor to restructure his debt payments over a 3-to-5-year period. By filing for personal

bankruptcy under chapter 13, drunk drivers are still allowed to discharge judgments awarded against them and thereby escape full payment to their victims.

One such case is that of Dorothy Mercer of Michigan. In 1982, Ms. Mercer was hit by a drunk driver traveling over 100 miles per hour with twice the legal limit of alcohol in his blood. She filed a civil suit against the driver to compensate her for her injuries, including permanent brain damage and a compression of the spine that caused a loss of three inches in height. To protect himself from the lawsuit, the drunk driver filed for bankruptcy under chapter 13 in November 1984. Because any judgment could be fully discharged by the bankruptcy court at a future date, Ms. Mercer was forced to settle for a fraction of what she was entitled to recover.

S. 1931 is intended to amend the Bankruptcy Code to close the loophole that allows discharges of this type. As Chairman Biden stated, S. 1931 "prevents drunk driving victims from being victimized a second time under the bankruptcy laws," and "protects the rights of drunk driving victims." (Statement of Chairman Biden on S. 1931, June 14, 1990.)

B. DISCHARGE OF LIABILITY ARISING FROM DRUNK DRIVING

Congress traditionally has prevented those guilty of criminal acts from discharging debts, if discharge would result in the failure to pay the damages of their victims. By tracing the development of the modern Bankruptcy Code on this issue, it is possible to better understand the rationale for barring the discharge of debts owed to victims.

Section 523(a)(9) of title 11 of the United States Code provides an exception to discharge for debts arising from the "willful and malicious injury by the debtor to another entity or to the property of another entity." Judicial interpretations of this statutory language have differed. Many believe that drunk driving related civil judgments fit this category of nondischargeable debt. Several courts have decided that drunk driving constitutes an intentional act justifying the conclusion that any resultant injuries were willful and malicious.

Other courts have taken a contrary view. For example, the bankruptcy court in *In re Kuepper*, 36 B.R. 680, 683 (B.R. E.D. Wis. 1983), stated that "negligent driving by one who also happens to be intoxicated does not always create willful malicious conduct." The court further stated that the definition of willful and malicious could not be applied inflexibly.

Congress undertook to resolve this conflict in the case law when it amended the Bankruptcy Code in 1984. Senator Danforth introduced legislation to clarify the law relating to the nondischargeability of civil debts incurred by drunk drivers. In the Bankruptcy Amendments and Federal Judgeship Act (Public Law 98-353), an exception to the discharge of debts was created

> to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred as a result of the debtor's operation of a motor vehicle while legally intoxicated

> under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle are operated and within which such liability was incurred. (11 U.S.C. 523(a)(9).)

Put simply, this 1984 legislation prevented "driving while intoxicated" related debts from being discharged.

The purpose of section 523(a)(9) was made clear by Senator Dole. The reforms were intended "to ensure that victims of the drunk driver do not have their judgments against the drunk driver discharged in bankruptcy." (130 Cong. Rec. S. 8899, June 29, 1984.) It should be noted that at the time Public Law 98-353 was enacted, no distinction was made to differentiate the treatment accorded to chapter 7, 11, or 13 debtors seeking a discharge of their debts arising from drunk driving related civil judgments.

C. CLARIFICATIONS OF THE CODE ACCOMPLISHED BY S. 1931

Although the wording of section 523(a)(9) was meant to be as clear as the intent of its drafters, the application throughout the country has been uneven at best. The Bankruptcy Code must be further revised in order to fully realize the aim of the drunk driving provision added to the code in 1984. The three required changes are:

(1) a prohibition on dischargeability under chapter 13;
(2) the elimination of the "race to the courthouse;" and
(3) coverage of drivers impaired by the use of drugs.

S. 1931, introduced by Senators Danforth, Biden, Thurmond and Pell on November 12, 1989, accomplishes each of these objectives.

1. Chapter 13

Many believe that debts that arise from a debtor's operation of a motor vehicle while legally intoxicated or impaired by use of alcohol or drugs are not avoidable or dischargeable in bankruptcy court. This assumption is accurate with regard to chapters 7, 11, and 12 of the Bankruptcy Code, which deny the discharge of debts resulting from criminal acts unless the victim is paid in full by the debtor. This is not the case, however, if the debtor chooses a chapter 13 plan—otherwise known as a "wage earner's plan."

Under current law, innocent victims who have already suffered physical pain and financial loss are effectively revictimized by chapter 13, which allows for the discharge of drunk driving related debts. Numerous lawyers, bankruptcy judges, and victims' rights organizations believe this kind of discharge is a national disgrace.

Bankruptcy laws have historically given the honest and financially distressed debtor a fresh start. However, those victimized by drunk or drugged drivers will never have a fresh start, and therefore, drivers found liable in a civil court should not be granted a fresh start until sufficient reparations are made to the innocent victim or the surviving family.

The most significant improvement with regard to section 523(a)(9) concerns its application to chapter 13 cases. There has been no compelling argument made for treating chapter 13 debtors differently from debtors filing for bankruptcy under chapters 7, 11, and 12. Therefore, in order to make the system more equitable and

to foreclose any further abuse of this loophole by debtors, section 2 of S. 1931 makes the exception to discharge in section 523(a)(9) applicable to chapter 13 debtors.

2. The Race to the Courthouse

Conflicting judicial decisions have raised the question of whether the requirement in section 523(a)(9), that the "debt arise from a judgment or consent decree," creates a race to the courthouse adverse to the interests of the creditor-victim. Some courts have read the language narrowly and have created a requirement that, in order to render a debt nondischargeable, a drunk driving victim's claim for damages must be reduced to a judgment before the debtor-driver files a bankruptcy petition. Such an interpretation has led to the result in some instances of a debtor being able to defeat the intent behind section 523(a)(9) simply by filing a bankruptcy petition before the creditor-victim can reduce his claim to a judgment. *Matter of Cain*, 96 B.R. 115 (B.K. N.D. Ohio 1988); *In re Jackson*, 77 B.R. 120 (B.K. N.D. Ohio 1987).

However, other courts that have considered this issue have refused to read section 523(a)(9) so narrowly. A recent decision of the Court of Appeals for the Ninth Circuit is illustrative. The court in *In re Hudson*, 859 F.2d 1418 (9th Cir. 1988), held that a drunk driving claim need not be reduced to a judgment or consent decree before the debtor files for bankruptcy in order to have the resulting debt declared nondischargeable. Acknowledging the race to the courthouse problem, the court reasoned that to permit discharge before a claim was reduced to a judgment would effectively nullify the statute and lead to a result clearly contrary to the expressed legislative intent. After reviewing the legislative history of section 523(a)(9), the court in *Hudson* concluded:

> We think it evident that Congress sought three objectives when it adopted Sec. 523(a)(9): (1) to deter drunk driving; (2) to ensure that those who caused injury by driving drunk did not escape civil liability through the bankruptcy laws; and (3) to protect victims of drunk driving. (Id. at 1423.)

The committee agrees with this interpretation of the Circuit Court of Appeals for the Ninth Circuit in *In re Hudson*. The reference in the statute to "judgment or consent decree" was never meant to create a race to the courthouse. Debtors should not be permitted to use this provision to discharge substantial civil liability and thereby escape compensation of their victims.

In response to the race to the courthouse problem, section 4 of S. 1931 provides the creditor-victim with sufficient time to reduce his or her claim to a judgment. S. 1931 ends the race to the courthouse by adding to the list of debts which are excepted from the automatic stay under section 362(b) of title 11 of the United States Code those debts resulting from the commencement or continuation of an action of the type described in section 523(a)(9).

The automatic stay provision in the Bankruptcy Code provides a broad stay of litigation against the debtor. Section 362(b) identifies certain actions against the debtor that are not stayed by the filing of a bankruptcy petition. These exceptions to the automatic stay in-

clude criminal proceedings and alimony and child support actions against the debtor. Section 4 of S. 1931 would create another exception to the automatic stay for contingent liabilities relating to claims made by creditor-victims of the type described in section 523(a)(9).

Once filing a proof of claim on a contingent liability, a creditor-victim will have the opportunity to reduce his or her claim to a judgment or consent decree throughout the statutory period of the claim. Until such time as the civil claim is reduced to a judgment, decided in the debtor's favor, or abandoned, the bankruptcy plan will have to provide for payment of the liability. Otherwise, confirmation of the plan will be held in abeyance by the bankruptcy court pending disposition of the civil case. No discharge relating to liability from claims under section 523(a)(9) will be granted, and debtors will not be able to escape payment of civil judgments as now occurs under some interpretations of section 523(a)(9).

If the claim of a creditor-victim is reduced to a judgment, the amount of the judgment will need to be paid in full as part of the bankruptcy plan, and the debtor will remain liable for any amount not previously paid to the creditor-victim.

3. Drugged Drivers

The reference in section 523(a)(9) to "liability incurred as the result of a debtor's operation of a motor vehicle while legally intoxicated," has created ambiguity as to the section's scope. The statutory language could be read to imply that section 523(a)(9) makes nondischargeable only those debts arising from liability incurred as the result of alcohol abuse. No separate provision is made for those operating a motor vehicle while impaired by the use of drugs. This oversight provides a potential loophole where State laws concerning "intoxication" cover only impairment by use of alcohol.

Section 3 of the bill eliminates any ambiguity on this point. Specifically, section 3 inserts the phrase "or impaired by use of alcohol or drugs" after the phrase "legally intoxicated." This change will make clear that drivers may not escape liability or seek a discharge of debts owed as a result of driving while impaired or intoxicated from the use of drugs. The term "drugs" includes both controlled substances and other drugs which may render a driver impaired or intoxicated. A finding as to whether a driver was impaired or intoxicated is one for the State of Federal trial court and not within the scope of review of the bankruptcy court.

D. GOVERNMENT RESTITUTION ORDERS

At the markup on S. 1931 held by the Judiciary Subcommittee on Courts and Administrative Practice, an amendment offered by Senator Grassley was adopted concerning civil and criminal restitution orders arising from actions brought by the Government. This amendment makes restitution orders payable to the Government nondischargeable in bankruptcy. Specifically, section 5 of S. 1931 further amends section 523(a) by adding to the list of nondischargeable debts those that arise from "a proceeding brought by a governmental unit to recover civil or criminal restitution." Section

6 amends section 1322(a) of title 11 to require full payment of Government restitution orders as a condition for confirmation of a chapter 13 bankruptcy plan.

The amendment offered by Senator Grassley will have the combined effect of barring the use of chapter 13 by convicted criminals seeking to discharge court-ordered restitution payments, and of codifying *Kelly* v. *Robinson*, 479 U.S. 36 (1986), a decision of the Supreme Court holding that restitution obligations imposed by State courts as part of a criminal sentence cannot be discharged under chapter 7. Additionally, this amendment will have the effect of overruling the Supreme Court's recent decision in *Pennsylvania Department of Public Welfare* v. *Davenport*, 110 S.Ct. 2126 (1990), which held that criminal restitution obligations are dischargeable debts under chapter 13.

Sections 5 and 6 of S. 1931 will promote the protection of crime and fraud victims, while preserving a judge's discretion to continue to order restitution as an alternative sentence to incarceration in criminal cases. Importantly, these provisions will prevent Federal bankruptcy courts from invalidating the results of State criminal proceedings. The amendment has been formally endorsed by the National Association of Attorneys General.

* * * * * * *

In 1984, Congress enacted legislation in order to respond to the growing call from society to require drunk drivers to bear responsibility for their actions. The changes to the Bankruptcy Code provided for by S. 1931 will fill gaps in the law that have prevented this goal from being realized and have left victims of drunk driving accidents uncompensated or undercompensated for their injuries. By enacting S. 1931, the message being sent to drunk drivers is that they will be held financially accountable for their actions. The message being sent to victims and their families is that their rights will be protected.

IV. Vote of the Committee

On June 14, 1990, the Committee on the Judiciary, a quorum being present, unanimously approved an amendment in the nature of a substitute and, by voice vote, ordered the bill, S. 1931, the Drunk Driving Victims' Protection Act, favorably reported.

V. Section-by-Section Analysis

Section 1: Title: "Drunk Driving Victims' Protection Act."

Section 2: Makes 11 U.S.C. 523(a)(9) applicable to debtors who file for bankruptcy under chapter 13 of the U.S. Bankruptcy Code.

Section 3: Amends 11 U.S.C. 523(a)(9) to include debtors who operate a motor vehicle while "legally intoxicated or impaired by use of alcohol or drugs."

Currently, 11 U.S.C. 523(a)(9) makes nondischargeable those debts that arise from a judgment or consent decree wherein liability was incurred as the result of a debtor's operation of a motor vehicle while legally intoxicated. No separate provision is made, however, for those who operate a motor vehicle while impaired by the use of drugs.

Section 3 of S. 1931 amends section 523(a)(9) by inserting the phrase "or impaired by use of alcohol or drugs," after the phrase "legally intoxicated." This addition makes it clear that drugged drivers may not escape liability or seek a discharge for debts owed as a result of driving while impaired or intoxicated from the use of drugs.

Section 4: Amends 11 U.S.C. 362(b) by adding to the list of debts excepted from the automatic stay those concerning a creditor-victim's commencement or continuation of an action on a claim of the type described in section 523(a)(9).

Once filing a proof of claim on a contingent liability (a pending civil claim for damages), the victim of a drunk or drugged driver will have the ability to reduce his or her claim to a judgment or consent decree throughout the statutory period of the claim. In this way, section 4 prevents a "race to the courthouse." No discharges relating to pending claims will be granted, and debtor-drivers will no longer escape payment of civil liability.

Section 5: Amends section 523(a) to add to the list of nondischargeable debts those that arise from civil or criminal restitution orders resulting from actions brought by the Government. This provision will codify the Supreme Court's 1986 decision in *Kelly* v. *Robinson*, 479 U.S. 36, concerning the dischargeability under chapter 7 of restitution obligations imposed in State criminal cases. This section also will limit the ability of dishonest debtors to discharge restitution orders won by the States and by the Federal Government in civil litigation.

Section 6: Makes modified section 523(a)(11) applicable to debtors who file under chapter 13 and requires that restitution be paid in full prior to the confirmation of a bankruptcy plan.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 27, 1990.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1931, the Drunk Driving Victims' Protection Act, as ordered reported by the Senate Committee on the Judiciary, June 14, 1990. We estimate that no significant cost to the federal government or to state or local governments would result from enactment of this bill.

S. 1931 would prevent a debtor from avoiding, through chapter 7 or chapter 11 bankruptcy proceedings, payment of certain debts arising out of the operation of a motor vehicle while legally intoxicated or impaired by the use of alcohol or drugs. (Currently law addresses only alcohol intoxication.) The bill also would extend this provision to chapter 13 bankruptcy proceedings. In addition, under the bill the filing of a bankruptcy petition would not operate as an automatic stay for any action arising out of such operation of a motor vehicle.

The bill also would prevent a debtor from avoiding, through chapter 7 or 11 bankruptcy proceedings, payment of debts arising from actions brought by governmental units to recover civil or criminal restitution, and would require in a chapter 13 bankruptcy proceeding that any such debts be fully paid.

Based on information provided by the Administrative Office of the U.S. Courts, CBO expects that S. 1931 could result in a small increase in costs incurred for litigation, as well as some increased recoveries of civil or criminal restitution. While CBO cannot estimate the amounts of any such costs or recoveries, we do not expect either to be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b) of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have a direct regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the standing Rules of the Senate, changes in existing law made by S. 1931, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new material is printed in italic; existing law in which no language is proposed is shown in roman):

UNITED STATES CODE

TITLE 11—BANKRUPTCY

CHAPTER 3—CASE ADMINISTRATION

* * * * * * *

Subchapter 4—Administrative Powers

§ 362. Automatic stay.

* * * * * * *

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of

Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; [or]

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively[.]; *or*

(14) under subsection (a) of this section, of the commencement or continuation of an action on a claim of the type described at section 523(a)(9) of this title.

* * * * * * *

CHAPTER 5—DEBTOR'S DUTIES AND BENEFITS

* * * * * * *

§ 523. Exceptions to discharge.

* * * * * * *

(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated *or impaired by use of alcohol or drugs* under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; [or]

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a) (2), (3), (4), (5), (6), or (7) of this title, or under section 14c (1), (2), (3), (4), (6), or (7) of such Act[.]; *or*

(11) to the extent that such debt arises from a proceeding brought by a governmental unit to recover civil or criminal restitution, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit.

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CHAPTER 13—DEBTS OF INDIVIDUALS

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§ 1322. Contents of plan.

(a) The plan shall—

[See main volume for text of (1)]

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; [and]

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class[.]; *and*

(4) provide for the full payment, in deferred cash payments, of all claims which would be nondischargeable under section 523(a)(11).

§ 1328. Discharge.

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1332(b)(5) of this title; [or]

(2) of the kind specified in section 523(a)(5) of this title[.]; *and*

(3) of the kind specified in section 523(a)(9) of this title.

○